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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RONNIE JONES and MELECIO ARCIOSA,
individually and on behalf of all others similarly
situated,

Case No. CV-08-00938JL

**PLAINTIFFS RONNIE JONES' AND
MELECIO ARCIOSA'S AND
DEFENDANTS FORESIGHT
MANAGEMENT SERVICES, LLC's
AND JEREMY GRIMES' JOINT CASE
MANAGEMENT STATEMENT**

Plaintiffs,

V.

**FORESIGHT MANAGEMENT SERVICES,
LLC and JEREMY GRIMES.**

Defendants.

Complaint Filed: 2/14/2008
Trial Date: None Set

Pursuant to this Court's Order Setting Initial Case Management Conference, Civil Local

1 Rule 16-9 and the Standing Order, Plaintiffs Ronnie Jones and Melecio Arciosa ("Plaintiffs") and
 2 Defendants Foresight Management Services LLC ("FMS") and Jeremy Grimes (jointly
 3 "Defendants") (collectively referred to as the "Parties"), by and through their respective counsel,
 4 submit the following Joint Case Management Conference Statement and Proposed Order.

5 **A. Jurisdiction and Service:**

6 This Court has jurisdiction of claims asserted under the Fair Labor Standards Act
 7 ("FLSA"), 29 U.S.C. §201, *et seq.*, and federal question jurisdiction under 28 U.S.C. §1331.
 8 There are no remaining parties to be served.

9 Defendants submit supplemental jurisdiction over the California state law claims is
 10 problematic. The court's adjudication of the California state law claims will be anchored on its
 11 adjudication of the accompanying FLSA claims. See 28 USC § 1367(a). Under the FLSA, only
 12 those employees who have filed the suit or opted in to the suit can be part of the FLSA suit. See
 13 29 USC §216(b) ["No employee shall be a party plaintiff to any such action unless he gives his
 14 consent in writing to become such a party and such consent is filed in the court in which such
 15 action is brought."] If the court eventually certifies a Rule 23 state law class, but only a few
 16 plaintiffs opt in to the FLSA claims, the court may be faced with the situation of a large number
 17 of plaintiffs in the state law class who have chosen not to prosecute their federal claims. Under
 18 such circumstances declining supplemental jurisdiction would be appropriate, given that the state
 19 law claims could be said substantially to predominate over the federal claims.

20 Plaintiffs submit that it is premature for the defense to raise this objection since it is based
 21 on speculation that the majority of employees will decline to participate in the FLSA action.

22 **B. Facts/Description of the Case:**

23 **1. A brief description of the events underlying the action:**

24 On February 14, 2008, Plaintiffs Ronnie Jones and Melecio Arciosa filed a class action
 25 complaint in the U.S. District Court for the Northern District of California, alleging seven claims:
 26 1) California Labor Code §226.7, failure to provide meal and rest periods in compliance with
 27 California law; 2) California Labor Code §203, failure to pay wages due under California Labor
 28 Code §§201 and 202; 3) California Labor Code §226, failure to provide itemized wage statements

1 in compliance with California law; 4) California Labor Code §204, 510 and 1194, failure to pay
2 minimum wage or overtime compensation; 5) 29 U.S.C.S. §206 and 207, Fair Labor Standards
3 Act, failure to pay minimum wage and overtime compensation; 6) California Business &
4 Professions Code §17200 et seq., unfair competition; and 7) Wrongful Termination in Violation
5 of Public Policy of Plaintiff Ronnie Jones (“Jones”). Plaintiffs seek to represent a class of “all
6 natural persons who were issued one or more paychecks by FMS in California during the period
7 beginning four years prior to the filing of th[e] Complaint,” or February 14, 2004 to the present.

8 Plaintiff Jones alleges he was hired by FMS in approximately August 2006 as a non-
9 exempt clerk at the FMS facility, Northgate Care Center, in San Rafael, California. Jones worked
10 as the business office manager for Northgate Care Center through July 2007. Plaintiff Melecio
11 Arciosa (“Arciosa”) alleges he was hired in approximately April 2003 as a non-exempt Certified
12 Nursing Assistant at the FMS facility in San Rafael, California. Arciosa’s employment ended
13 with FMS in November 2007.

14 FMS provides management and accounting services to skilled nursing facilities in
15 California. Over the past four years, FMS has provided services at facilities in San Rafael, San
16 Leandro, Calistoga, Castro Valley, Danville, Lafayette, Oakland, San Bruno, San Mateo, and Los
17 Angeles. FMS no longer provides services in San Leandro or Los Angeles.

18 Plaintiffs allege that during their employment at Northgate Care Center, they were not
19 provided with meal and rest periods in compliance with California law. As a result, they claim
20 they are entitled to a one-hour wage premium for each missed meal period and each missed rest
21 period under Wage Order No. 4. Plaintiffs also allege FMS failed to pay all wages earned on
22 separation, statutory minimum wage and applicable overtime pay. Plaintiffs also claim they were
23 not provided with accurate itemized wage statements. Plaintiffs claim FMS employed them but
24 failed to provide them with the data required by section 226 of the California Labor Code in their
25 wage statements.

26 Jones alleges he worked overtime but was misclassified as exempt from overtime and
27 therefore not paid for any overtime hours he worked. He claims he is entitled to unpaid wages
28 and applicable penalties. Jones also claims he was wrongfully terminated in violation of public

1 policy. Specifically, Jones claims that he was terminated because he failed to accede to demands
 2 of FMS that he falsify Medi-Cal Treatment Authorization Requests (“TARS”) to be submitted to
 3 the State of California.

4 Defendants deny Plaintiffs’ allegations. Defendants contend they provided Plaintiffs with
 5 all required meal and rest periods. Defendants contend they paid Plaintiffs for all hours worked,
 6 including overtime where applicable. Defendants contend that Jones was properly classified as
 7 exempt from the overtime premium. Moreover, Defendants contend Jones did not work any
 8 hours past the daily or weekly overtime threshold requirement. Defendants maintain they have
 9 properly paid all earned wages to both Plaintiffs. Defendants deny Plaintiffs have been harmed in
 10 any way by Defendants’ actions. Defendants contend Plaintiffs cannot establish FMS knowingly
 11 or intentionally violated wage and hour laws to recover penalties sought for alleged “willful”
 12 violations. Defendants contend Plaintiffs are barred from bringing their claims based on
 13 California Labor Code section 514.

14 **2. The principal factual issues which the parties dispute:**

15 The Parties have met and conferred regarding the numerous issues each believes exist or
 16 potentially exist in this matter. The fact that any particular issue is listed is not necessarily
 17 indicative that both Parties agree that the issue is relevant to the case, or even appropriately
 18 stated; rather, it is simply indicative that at least one of the Parties believes that the issue, as
 19 stated, is relevant at this time.

20 In light of the factual inquiry necessary to determine some legal issues and the
 21 interdependency of many factual and legal concepts, the Parties have attempted to frame the
 22 following issues in the most appropriate category. If any of the following issues are stated as
 23 factual issues when it would be more appropriate to list such issue in the legal category (or vice
 24 versa) the Parties incorporate such issue(s) in the correct category. In addition, further factual and
 25 legal issues may become known to one or both of the Parties as discovery continues.

26 The factual issues that the Parties dispute include, but are not necessarily limited to, the
 27 following:

28 * Whether Plaintiffs were provided with meal and rest periods in compliance with

1 California law;

2 * Whether Plaintiffs were properly paid for all work performed for FMS;
 3 * Whether Plaintiffs were paid for all overtime hours worked for FMS as required by
 4 California wage and hour law for time worked in excess of eight (8) hours in a workday , or forty
 5 (40) hours in a workweek;

6 * Whether Plaintiffs have been paid minimum wage for all hours worked;
 7 * Whether Plaintiffs were timely furnished with itemized wage statements providing
 8 the detail required by California Labor Code §226;
 9 * Whether Plaintiffs were injured by any allegedly defective wage statements;
 10 * Whether Plaintiffs were not paid all earned wages, and if so, whether that failure to
 11 pay was "willful":

12 * Whether Jones was properly classified as exempt from overtime;
 13 * Whether Plaintiffs ever worked over 8 hours in a day or over 40 hours in a
 14 consecutive 7-day period;
 15 * Whether FMS ever requested that Jones falsify Medi-Cal TARS;
 16 * Whether Jones was terminated for allegedly refusing to falsify Medi-Cal TARS;
 17 * Whether Jones reported any of his allegations to FMS;
 18 * Whether, and to what extent, Plaintiffs have suffered any damages as a result of
 19 Defendants' alleged actions;

20 * Whether Plaintiffs have mitigated their damages, if any;
 21 * Whether Defendants, and each of them, acted willfully.

22 C. **The principal legal issues which the parties dispute:**

23 * Whether Plaintiffs have exhausted their administrative remedies;
 24 * Whether Plaintiffs can establish personal liability of Defendant Jeremy Grimes;
 25 * Whether Plaintiffs have standing to bring the instant action on behalf of
 26 themselves or other unnamed putative class members;
 27 * Whether this case may be certified as a class action pursuant to Rule 23 of the
 28 Federal Rules of Civil Procedure, including, but not limited to, whether Plaintiffs' claims are

1 typical of those of the putative class, whether there are common policies and practices applicable
 2 to the putative class as a whole relating to Plaintiffs' claims, whether Plaintiffs have demonstrated
 3 an ascertainable class, and whether Plaintiffs are adequately represented;

4 * Whether the Court should assert supplemental jurisdiction over the California state
 5 law claims alleged in the complaint, for the reasons addressed in section A above ("Jurisdiction
 6 and Service");

7 * Whether Plaintiffs or any putative class members were subjected to a violation of
 8 California Labor Code §§ 204, 510, 1194, 1194.2 and 1197 by being denied minimum wage and
 9 overtime compensation;

10 * Whether Plaintiffs or any putative class members were subjected to a violation of
 11 California Business and Professions Code § 17200, *et seq.*, by being denied pay for all hours
 12 worked;

13 * Whether Plaintiffs or any putative class members were subjected to a violation of
 14 California Labor Code § 226 or Business & Professions Code § 17200 by not being timely
 15 furnished with itemized statements each pay period containing all statutorily required
 16 information;

17 * Whether Plaintiffs or any putative class members were subjected to violations of
 18 29 U.S.C.S §§ 206 and 207 by not being paid minimum wage and overtime compensation;

19 * Whether Plaintiff Jones can establish he was involuntarily terminated;

20 * Whether Plaintiff Jones or any other putative class member was misclassified as
 21 exempt from overtime and failed to receive all wages owed;

22 * Whether Plaintiffs or any putative class members are entitled to one hour of pay
 23 for each shift of four hours or more in which he or she was not provided with a ten-minute rest
 24 period;

25 * Whether Plaintiffs or any putative class members are entitled to one hour of pay
 26 for each shift of five hours or more in which he or she was not provided with a thirty-minute meal
 27 period;

28 * To what extent Plaintiffs' claims are barred by the applicable statutes of limitation;

1 * Whether any of Plaintiffs' claims are barred by Labor Code section 514.
 2 Defendant FMS employed numerous putative class members under the terms of several collective
 3 bargaining agreements. Under Labor Code section 514, those collective bargaining agreements
 4 serve to bar certain of Plaintiffs' claims;

5 * Whether, to the extent Plaintiffs or any putative class members were denied pay
 6 for all hours worked in accordance with California wage and hour law, such denial was "willful";
 7 * Whether Plaintiffs suffered any damages as a result of Defendants' alleged actions;
 8 * Whether Plaintiffs have mitigated their damages, if any.

9 **D. Motions:**

10 Plaintiffs anticipate filing a motion for class certification under FRCP Rule 23 and a
 11 motion for certification of an FLSA collective action pursuant to 29 U.S.C. §216(b).

12 Defendants may file a dispositive motion to dismiss Plaintiffs' claims. If the case
 13 proceeds to trial, Plaintiffs and/or Defendants may move to bifurcate liability from damages at
 14 trial. Defendants reserve the right to file a motion to decertify the class to the extent a class
 15 action is certified.

16 The parties agree that additional motions, not presently foreseeable, may be necessary
 17 depending on the results of discovery and further investigation.

18 **E. Amendment of Pleadings:**

19 Plaintiffs intend to amend their complaint to add a claim under the California Private
 20 Attorney General Act ("PAGA"), Labor Code §2699. Defendants will seek leave to amend their
 21 answer to respond to any amended complaint or if otherwise necessary based on information
 22 revealed in discovery and continuing investigation.

23 **F. Evidence Preservation:**

24 Defendants have taken affirmative steps to ensure the preservation of all evidence –
 25 including evidence electronically recorded – relevant to the issues reasonably evident in the
 26 action.

27 **G. Disclosures:**

28 The parties have filed their initial disclosures concurrently with this statement. As further

1 documents and witnesses may become known as the investigation and discovery in this matter
 2 continue, the parties will supplement their disclosures as necessary. Since this case is a putative
 3 class action involving potentially hundreds of employees working at more than a dozen facilities,
 4 the parties anticipate supplementation of initial disclosures will be necessary.

5 **H. Discovery:**

6 The parties have not engaged in any formal discovery to date. The parties have identified
 7 relevant materials to exchange in their initial disclosures. The parties agree that it may be
 8 necessary and appropriate to differentiate between discovery at the class certification stage, and
 9 later discovery after the Court rules on Plaintiffs' anticipated motions for class or FLSA section
 10 16(b) collective action certification [29 USC §216(b)]. Paragraphs A-C below address discovery
 11 at the class certification stage only.

12 **1. Written discovery.** After reviewing the initial disclosures, the parties will
 13 propound written discovery, requests for production, requests for admissions, and interrogatories
 14 within the next sixty days.

15 **2. Depositions.** Plaintiffs anticipate noticing the deposition of the individual
 16 defendant, corporate persons most knowledgeable, and any persons submitting declarations for
 17 Defendants. Plaintiffs will determine the number of officers and managers to be deposed
 18 following receipt of Defendants' initial disclosures. Defendants anticipate noticing the
 19 depositions of the named Plaintiffs, as well as any putative class members or other witnesses who
 20 submit declarations in support of Plaintiffs' anticipated motions for class or FLSA section 16(b)
 21 collective action certification.

22 **3. Discovery Limitations.** The parties do not at this time seek any limitations or
 23 modifications of the discovery rules as imposed by the Federal Rules of Civil Procedure and
 24 Local Rules.

25 **I. Class Actions:**

26 (1) Plaintiffs contend that a class action is maintainable under F.R.Civ.P. 23(a), (b), and
 27 (c).

28 (2) Plaintiffs contend the action is brought on behalf of "all natural persons who were

1 issued one or more paychecks by FMS in California during the period beginning four years prior
 2 to the filing of th[e] Complaint.”

3 (3) The facts demonstrating that Plaintiffs are entitled to maintain the action under
 4 F.R.Civ.P. 23(a) (b) and (c) include the following:

5 There were well in excess of five-hundred persons who were tendered a paycheck by
 6 Defendant during the four years before the filing of the Complaint; the putative Class is so
 7 numerous that joinder of all putative Class Members is impracticable; there are numerous, crucial
 8 legal and factual issues that are common to the putative Class; the claims of the Plaintiffs are
 9 typical of the claims of the putative Class; Plaintiffs and their counsel will adequately and fairly
 10 represent the interests of the putative Class; the prosecution of separate actions by or against
 11 individual Members of the putative Class would create a risk of inconsistent or varying
 12 adjudications that would establish incompatible standards of conduct for the party opposing the
 13 putative Class; and, by FMS not providing all required meal and rest breaks, by FMS not paying
 14 the Class for all work performed, by not paying the Class for all overtime worked, by not paying
 15 the Class minimum wages for all hours worked, and by not providing the appropriate pay-stub
 16 information to its employees, the party opposing the putative Class has acted and refused to act on
 17 grounds generally applicable to the putative Class, thereby making appropriate final injunctive
 18 relief with respect to the putative Class as a whole.

19 Defendants submit that this case is not appropriate for class action based on numerosity,
 20 the fact that individual issues predominate, including the fact that several different collective
 21 bargaining agreements apply at different facilities, and because the mixed state and federal claims
 22 raise problems regarding manageability.

23 **J. Related Cases:**

24 None that the parties are aware of at the present time.

25 **K. Relief:**

26 Plaintiffs, on behalf of themselves and the putative class members, seek compensation for
 27 one hour of pay for each work shift longer than four hours that the class member was not
 28 provided a ten-minute meal period, compensation for one hour of pay for each work shift longer

1 than five hours during which the class member was not provided a thirty-minute non-working
2 meal period and an injunction to prevent such misconduct in the future, continuing wages from
3 the date on which wages were due and an injunction against Defendants' for failing to pay for all
4 hours worked, damages and liquidated damages for all wages earned including overtime pay
5 under the California Labor Code and the Fair Labor Standards Act, and injunctive relief and
6 restitution and other equitable relief pursuant to section 17203 of the California Business and
7 Professions Code. Plaintiffs also seek monetary relief under the California wage and hour laws
8 for the payment of unpaid wages, including pre- and post-judgment interest, statutory penalties,
9 and an award of costs and attorneys' fees as prayed for in the Complaint.

10 Defendants deny that Plaintiffs or members of the putative class are legally entitled to any
11 such relief.

12 **L. Settlement and ADR:**

13 The Parties have had preliminary settlement discussions, and have agreed to a settlement
14 conference before a Magistrate Judge.

15 **M. Consent to Magistrate Judge for Trial:**

16 The parties will each file their consent to a Magistrate Judge for trial.

17 **N. Other References:**

18 At this time, the parties do not recommend referring this case to binding arbitration, a
19 special master, or the Judicial Panel on Multidistrict Litigation.

20 **O. Narrowing of Issues:**

21 Defendants submit that the issues in this case may be narrowed by a motion for judgment
22 on the pleadings or a motion for summary judgment or in the alternative partial summary
23 judgment. Plaintiffs and/or Defendants may seek to bifurcate liability from damages at trial. The
24 parties are unaware of any other means to narrow the issues at this time, although a magistrate
25 judge may be able to assist in such narrowing in some respects in a settlement conference

26 **P. Expedited Schedule:**

27 The parties may explore discovery of representative evidence prior to seeking testimony
28 and evidence from all putative class members. Each party reserves its rights on this question.

1 The parties are unaware of any other means to expedite or streamline this process at this time.

2 **Q. Scheduling:**

3 The parties propose scheduling an early settlement conference of this matter following
 4 initial discovery such as depositions of the Plaintiffs and of a Company representative. If the
 5 settlement conference proves unsuccessful, the parties propose the following schedules:

6 Defendant:

- | | | |
|----|--|-------------------|
| 7 | 1. Last day to amend pleadings, except to add PAGA claim and file an | |
| 8 | amended responsive pleading, and/or to join plaintiffs if the class | |
| 9 | is not certified: | June 30, 2008 |
| 10 | 2. Pre-class certification discovery | February 15, 2009 |
| 11 | 3. Class certification motion deadline | March 15, 2009 |
| 12 | 4. Non-expert discovery cut-off | To be determined |
| 13 | 5. Expert disclosure | To be determined |
| 14 | 6. Expert discovery cut-off | To be determined |
| 15 | 7. Dispositive motion deadline | To be determined |
| 16 | 8. Trial | To be determined |

17 **R. Trial:**

18 Plaintiffs have demanded a jury trial. The Parties propose setting a trial date after class
 19 certification has been determined, as the length of trial will be determined by whether or not the
 20 case is to be tried as a class action.

21 **S. Disclosure of Non-party Interested Entities of Persons:**

22 Defendants have filed a Certification of Interested Entities or Persons. The interested
 23 parties include Foresight Management Services, LLC; Meridian Health Services Holdings
 24 Corporation, a California corporation; and Jeremy Grimes.

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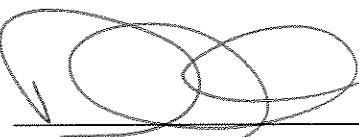
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1 Dated: May 14, 2008

HARRIS & RUBLE

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3 By:



4
5 Alan Harris
David Zelenski
6 Attorneys for Plaintiffs
7 RONNIE JONES and MELECIO ARCIOSA

8 Dated: May 14, 2008

NORTH BAY LAW GROUP

9 By:



10 David S. Harris
11 Attorney for Plaintiffs
RONNIE JONES and MELECIO ARCIOSA

12 Dated: May 14, 2008

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15 Robert M. Pattison
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18 FORESIGHT MANAGEMENT SERVICES,
19 LLC and JEREMY GRIMES

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